

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GARY BUCY,

Plaintiff,

v.

No. CIV 12-0287 JH/RHS

KARA THOMAS,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Plaintiff's motion to set aside order and to amend complaint (Doc. 9). When Plaintiff filed his motion, the applicable rule allowed him to amend his complaint "as a matter of course," Fed. R. Civ. P. 15(a)(1), and therefore he was not required to obtain leave of Court to amend his complaint. The motion will be denied, in part because it is moot.

By order entered on August 23, 2012, the Court dismissed Plaintiff's claims against Defendant New Mexico Probation and Parole. Plaintiff's motion makes no allegation that the August 23 order was error. He alleges only that his complaint "inadvertently" named Probation and Parole, and he instead meant to sue Secretary of Corrections Gregg Marcantel.

Neither Plaintiff's complaint nor his motion to amend makes any factual allegations against Secretary Marcantel. He thus fails to assert personal involvement of this purported Defendant in the alleged constitutional violation. *See Mitchell v. Maynard*, 80 F.3d 1433, 1441 (10th Cir. 1996). And if Plaintiff is seeking to assert claims against Secretary Marcantel in his official capacity, these claims are barred for the same reasons that the Court previously dismissed them against Probation and Parole. *See Florez v. Johnson*, 63 F. App'x 432, 435 (10th Cir. 2003) (citing *Edelman v. Jordan*, 415 U.S. 651, 663 (1974); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989)).

Therefore, to the extent that Plaintiff's motion to amend added Secretary Marcantel, individually or officially, to this action "as a matter of course," Fed. R. Civ. P. 15(a), his claims against this Defendant will be dismissed. The Court will direct the Clerk not to add Secretary Marcantel's name to the docket as a Defendant.

IT IS THEREFORE ORDERED that Plaintiff's motion to set aside order (Doc. 9) is DENIED;

IT IS FURTHER ORDERED that Plaintiff's motion to amend his complaint (Doc. 9) is DENIED as moot; to the extent this motion added Secretary Marcantel to this action as a matter of course, Plaintiff's claims against him are DISMISSED; and the Clerk is directed to make no changes to the docket.


UNITED STATES DISTRICT JUDGE